Postal Regulatory Commission
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BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

RATE ADJUSTMENT DUE TO	)	
EXTRAORDINARY OR EXCEPTIONAL	)	Docket No. R2013-11R
CIRCUMSTANCES	)	

REPLY COMMENTS OF THE
SOFTWARE & INFORMATION INDUSTRY ASSOCIATION

(July 6, 2015)

The Software & Information Industry Association (SIIA) hereby submits these reply comments in response to Order No. 2540, which reopened this docket for further proceedings in response to the June 5 decision of the Court of Appeals in *Alliance of Nonprofit Mailers v. PRC*, 2015 WL 3513394 (D.C. Cir., June 5, 2015). In its decision and order, the court vacated the “count once” constraint on recession-related loss recovery imposed by the Commission in Order No. 1926, but otherwise denied the petitions for review of the Postal Service and the mailers. SIIA replies here to the initial comments of the United States Postal Service (“Postal Service” or “USPS”).

Thank you for adopting expedited comment procedures to provide the opportunity to address the question of how to count the volume of lost mail in calculating the exigent surcharge, as well as any other relevant issues. With these comments, SIIA urges the Commission to appropriately limit the application of the exigent rate increase, resulting in a rejection of the USPS attempt to relitigate constraints placed on Order No. 1926 and a prompt end to the current surcharge reflecting no more than the ability to collect $2.826 billion in total contribution, instead of $2.766 billion or other estimates suggested by the Postal Service.

The Postal Accountability and Enhancement Act (PAEA) established a regulatory environment for postal rates by creating a system of price caps. SIIA/ABM was a strong proponent of this system, where price regulation of market-dominant postal products serves as a substitute for the pressures of market pricing faced by private firms. Until recently, this system has largely been effective in balancing the needs of increased postal revenue with enabling a fair, predictable environment for mailers.

With the introduction of the exigent price increase in 2013, we have seen a departure from the statutory intention of Congress and the creation of an environment where rates have already become unpredictable and far higher than market forces would provide. It is particularly troubling that the Postal Service has approached exigency as an opportunity to substantially increase rates—not even just temporarily but permanently—in the absence of statutory authority to do so.

That is, the Postal Service initially sought to apply a permanent exigent increase in 2013. While we continue to question the rational that the "Great Recession" truly created an exigent circumstance, we appreciate the Commission's recognition that such a circumstance would provide for only a temporary, limited recouping of lost revenue, and instituted the "count once" approach and methodology currently under examination per the June 4th decision by the Court of Appeals.

It should be noted that the Postal Service challenged unsuccessfully in the D.C. Circuit Court, arguing for a permanent surcharge. In their motion, the Postal Service argued that "the court left open the question of whether the totality of Order No. 1926 stated a consistent position regarding the Postal Service's ability to reduce institutional costs hrough operational adjustments made in response to dramatically lower volume levels."[1]

It is here where the Postal Service has consistently misapplied the statutory objective of the exigent circumstance and rate increase opportunity. That is, the

1 United States Postal Service Motion at 3.

Postal Service continues to fail to recognize that lost mail volumes were not wholly attributable to the Recession, but were rather the result of a number of factors, such as evolution of products and services to meet customers evolving demands. As the mailing community demonstrated in our briefs to the court, Order No. 1926 overstated the losses that were due to the 2007-209 recession by erroneously attributing to the recession the volume losses associated with (1) several non-linear intervention variables in the Thress model, and (2) the trend component of the macroeconomic variable for Single Piece First-Class Mail.

While the DC Circuit refused to consider these challenges based on their level of technicality and the Court's lack of expertise in this area, we urge the Commission to consider these in this proceeding to address the methodological approach for accounting for volume losses in calculating the exigent surcharge, as well as other relevant issues. We are confident that these arguments, among others, provide sound justification that the Postal Service has again completely miscalculated and overstated losses due to the Recession.

SIIA and our membership provide an exemplary model of this reality. SIIA is the leading trade association representing business media and information technology companies, including those that publish business to business industry magazines and newsletters. ABM is a business media division within SIIA, who's approximately 200 members who reach an audience of more than 100 million professionals and represent nearly 4,000 print and online titles and over 1,000 trade shows, with more than $20 billion in annual revenues.

In the prime of business magazine media, ABM members published approximately 600 print periodical titles and mailed approximately 800 million magazines and newsletters each year, representing approximately 15% of the periodicals class within the US Postal Service. Beginning in the last decade, SIIA members mostly provided information in print, delivered through the USPS, or in person at trade shows or exhibition halls.

However, business magazines have experienced, and are continuing to experience, market challenges that have affected our members' product offerings, and their revenue. Declining advertising revenues and the reduction in demand for some of their magazines have been fundamental variables in the changing dynamics of SIIA member offerings. This has caused many magazines to restructure their business models to reduce costs, which has sometimes included reducing staff as well as investing in new business opportunities.

The rise of the Internet and the increasing use of new devices such as smartphones and tablets has been a bright spot for our industry, dating back for more than a decade when business models began shifting. New Internet-based business models have allowed SIIA/ABM members to provide information on-line, first as information the reader accessed by going to the website, and later as information that is "pushed" to readers as it develops, providing opportunities to reach specialized audiences. Most of our member companies now have mobile device applications allowing information to flow to the reader wherever they may be. These needed changes have sometimes resulted in painful decisions being made that affect people's lives and investing funds in new business models that in some cases which are sometimes very effective, but sometimes not yet proven successful.

Therefore, while we have empathy for the fiscal and structural challenges and limitations of the Postal Service and the losses they are experiencing, we strongly disagree with the USPS characterization of exigency attributable to an economic slowdown and resulting lost mail volume and revenue. In fact, the Postal Service had an advantage our members did not through the application of the exigent surcharge. Private companies facing market challenges do not have the ability to raise prices to compensate for inefficiency and excessive expenditures. The $2.766 billion authorized in order No. 1926 more than adequately covers the exigency provision recognized by the Commission.

All businesses have constraints, and for the Postal Service that should be the price cap as set by Congress by the PAEA.   The exigency provision amount as set forth by the PRC in order NO. 1926 has served its purpose. In Order No. 1926, the Commission appropriately recognized the primacy of the inflation cap system of rate regulation, stating "[t]he price cap is the centerpiece of the PAEA's regulatory paradigm. The exigent rate provision in section 3622(d)(1)(E) is a narrow exception to the price cap. Order No. 1926, at 28 (Dec. 24, 2013).

During this and any other proceedings on USPS exigency requests, SIIA urges the Commission to appropriately maintain the exigency provision of PAEA as a limited opportunity to address only "exception or extraordinary events," rather than a mechanism to circumvent statutory limits or offset other fiscal constraints not associated with specific exigent circumstances.

The Postal Service, to date, has provided a range of different proposals, highlighting an inconsistent and ill-informed perspective on "exigent" revenue losses. The Postal Service's most recent and preferred proposal would generate $11.431 billion in contribution through the exigent surcharge—more than four times the total losses that the Commission initially determined were due to the 2007-2009 recession. The Postal Service's alternative proposal would generate $5.8 billion, more than twice the total losses attributed by the Commission to the recession in Order No. 1926.

In addition to the aforementioned market dynamics, we are convinced that any calculation of expenses lost due to the recession is imprecise for a variety of reasons. We strongly oppose the Postal Service's most recent proposal that the Commission extend the advent of the "new normal" until the beginning of Fiscal Year 2013, allowing the Postal Service to recover more than four times the amount the Commission attributed to the 2007-2009 recession. Indeed, not only has the Commission provided a careful balancing of the underlying factual and policy concerns in its existing definition of the "new normal," but there is no new justification for redefining the "new normal" standard at this time or in this fashion.

We also concur with the conclusion asserted by the Association for Postal Commerce, et al, that the Postal Service has erred in its method of converting the additional volume losses produced by eliminating the "count once" constraint. Rather, correctly adjusting the Commissions cumulative loss calculations by eliminating the "Count Once" constraint would raise the cumulative losses of the Postal Service from $2.766 billion to $2.826 billion or less, and that this proceeding has no basis to arrive at any greater exigent revenue loss.[2]

Respectfully submitted,

Software & Information Industry Association

David P. LeDuc
Senior Director, Public Policy
Software & Information Industry Association
1090 Vermont Avenue
6th Floor
Washington, DC 20005
(202) 789-4443
dleduc@siia.net

2 Comments of the Association for Postal Commerce, et al, June 26, 2015, at p 3-8.